

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 1:06CR64
(Judge Keeley)

BARBARA BLAND,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
REGARDING DEFENDANT'S PRE-TRIAL MOTION TO EXCLUDE SPECULATIVE
EVIDENCE OF POTENTIAL LOSS

On August 21, 2006, Defendant Barbara Bland ("Bland") filed a "Pre-Trial Motion to Exclude Speculative Evidence of Potential Loss" (dkt no. 15), asserting that the estimate of potential loss should be excluded pursuant to Federal Rule of Evidence 403 because the probative value, if any, is substantially outweighed by the danger of unfair prejudice. She further asserted that the estimate of potential loss is speculative and that, in fact, there was no actual loss; thus, the evidence should be excluded from trial. She also contended that the alleged loss should not be considered at sentencing because the amount of loss must be established by the Government by a preponderance of the evidence.

On August 28, 2006, the Government filed a response to Bland's motion, stating that it did not intend to present the estimate of loss in its case-in-chief because the amount of loss is not an element of the offense at issue in this case. It also stated that

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
REGARDING DEFENDANT'S PRE-TRIAL MOTION TO EXCLUDE SPECULATIVE
EVIDENCE OF POTENTIAL LOSS**

Bland's motion is premature with respect to sentencing and that the sentencing judge has the right to hear any evidence that she deems relevant and has the responsibility to determine the probative value of the evidence in sentencing the defendant.

The Court referred Bland's motion to the United States Magistrate Judge John S. Kaull for a report and recommendation. Accordingly, Magistrate Judge Kaull scheduled a hearing on Bland's pre-trial motion for September 1, 2006. However, on August 31, 2006, the parties submitted a joint stipulation, agreeing that the estimate of the loss would not be offered in the Government's case-in-chief, but that the Government was not prohibited from using the loss estimate in rebuttal or during the sentencing process. Therefore, the Magistrate Judge canceled the hearing and considered Bland's motion on the briefs and in light of the parties stipulation. On September 5, 2006, Magistrate Judge Kaull issued a Report and Recommendation, concluding that Bland's motion was moot with respect to trial issues and was premature with respect to sentencing issues.

In his Report and Recommendation, Magistrate Judge Kaull advised the parties that they should file any objections to his recommendations no later than 10 days after receiving service of

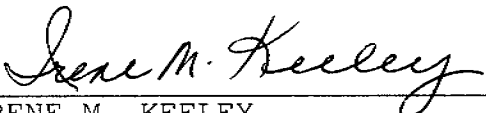
**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
REGARDING DEFENDANT'S PRE-TRIAL MOTION TO EXCLUDE SPECULATIVE
EVIDENCE OF POTENTIAL LOSS**

his Report and Recommendation. He also warned the parties that a failure to do so would result in the waiver of their appellate rights with respect to a judgment based on the Report and Recommendation.¹ Nevertheless, the parties have filed no objections.

Accordingly, the Court **ADOPTS** Magistrate Judge Kaul's recommendation and **DENIES AS MOOT** Bland's motion with respect to trial issues and **DENIES AS PREMATURE** Bland's motion with respect to sentencing issues.

The Clerk is directed to send a certified copy of this Order to counsel of record and all appropriate government agencies.

DATED: September 20, 2006.



IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

¹ Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).